

9

Evaluation of the Legal Aid Manitoba Expanded Eligibility Program

Greg Mason and Rita Gunn

Outline of the Expanded Eligibility Program

Legal Aid Manitoba provides services to those unable to afford legal representation. It is organized much like legal aid services in other provinces — eligibility is based on income; thresholds are set to income levels based on the Statistics Canada Low Income Cutoffs. The threshold eligibility amounts increase with family size. Under the previous system, it was recognized that clients who were denied legal assistance either deferred their use of the private bar, or proceeded at significant personal cost. The result was that many rejected applicants either placed themselves and their families in financial hazard, failed to pay fees owing to the private bar, or were unable to seek redress of their cases through the courts.

In June 1989 “The Expanded Eligibility Program” was introduced with funding assistance from the Federal Department of Justice. This pilot program recognized the need for an intermediate position on eligibility and developed an instalment plan for eligible applicants. Manitoba uses a mixed system where staff counsel and private lawyers may offer legal aid services under a certificate of eligibility. Clients may apply for legal aid either through legal aid offices or regional clinics, or through a private lawyer. Lawyers who offer services under a legal aid certificate are paid a lower fee (tariff) than if they served the client directly. For many lawyers the legal aid certificate is attractive because it assures payment for services rendered.

The advantages to the applicant of the Expanded Eligibility Program are:

- lower costs since the client is paying the Legal Aid Manitoba tariff for legal services — on average 25%–35% of comparable service from a private lawyer;
- there is no retainer;

Table 9-1

Income Threshold for Legal Aid Manitoba Programs

Family Size	Regular Legal Aid	Expanded Eligibility
1	\$12,000	\$21,500
2	\$16,000	\$25,000
3	\$21,500	\$29,000
4	\$25,000	\$31,500
5	\$29,000	\$35,000
6	\$31,000	\$38,000
7	\$35,000	\$41,000

- there is a limitation on disbursement costs, as Legal Aid Manitoba is able to purchase some services at reduced cost;
- payments are by fixed monthly instalments which allows a person with limited income to budget for legal costs rather than receiving large and irregular invoices.

Applicants accepted into the Expanded Eligibility Program are required to enter into an agreement that outlines a payment schedule, fixes a monthly payment (usually \$50–\$75), and removes the need for a retainer. Like regular legal aid, clients accepted into the Expanded Eligibility Program are issued a “certificate” that authorizes a lawyer to proceed with the case. The monthly instalments start immediately and the initial payment is requested within two or three weeks from the time the certificate is issued. Failure to maintain payments results in the certificate being cancelled and the lawyer is instructed to cease service. Because cases vary in terms of the legal resources required, clients are not provided with an estimated total bill, however the Expanded Eligibility contract does cite an average for that type of case and the monthly instalment permits the client to budget.

Table 9-1 shows the income thresholds for regular legal aid and expanded eligibility. It should be apparent that the program is targeted to the “working poor.” In 1991 the median family income (two adults two children) was approximately \$43,000.

Between June 1, 1989 and August 31, 1990, there were 748 Expanded Eligibility certificates issued and since the program started, a total of 2207 certificates have been issued. This article is based on the period June 1, 1989 - August 31, 1990.

Main Issues and Methodology of the Evaluation

This paper reviews three of the questions covered in the full evaluation study:

- program targeting;
- issues related to default on payments and the costs associated with attempts to collect debts;
- the reaction of the private bar and alteration in staff roles as a result of the new program.

The research process involved: construction of an evaluation framework in consultation with the client, client and denied applicant surveys, interviews with management, financial analysis, case analysis, and interviews with the private bar. The financial analysis involved a review of accounting information to develop profiles of operating costs and late payment patterns. Account information was linked with case and other client data to facilitate an analysis of the determining features of payment patterns. Random sampling was used to develop a basis for contrasting Regular Legal Aid and Expanded Eligibility clients. Client and non-participant information was analyzed using standard procedures of survey research (cross-tabulations). Finally, a default prediction model was constructed using logit analysis.

Program Targeting

Overview

The Expanded Eligibility Program clearly serves the working poor. Incomes and wealth are significantly lower than Manitoba averages. In terms of age and income distribution, the majority of Regular Legal Aid clients are younger and from a lower income level than the Expanded Eligibility clients. Also, about two-thirds of the clients for Expanded Eligibility and Regular Legal Aid are men. About 67% of the cases handled in the Expanded Eligibility Program are civil and domestic (compared to 40% in regular legal aid) and are concentrated in the low to middle income levels. Conversely, the Regular Legal Aid clients tend to be involved in criminal cases (most often relatively minor offences) and are concentrated in the lowest income level.

Income

A central issue in any program using means tests is whether the target group is being served and how many of those outside the program parameters were granted certificates. A common problem for means tested social services programs is the definition of income and the extent to which assets must be liquidated to receive service. Table 9-2 shows the income distribution for Expanded Eligibility (E.E.) and Regular Legal Aid (R.L.A.)

Table 9-2
Income by Program

Family Income	Program	
	E.E.	R.L.A.
\$0 - 10,000	2.2%	51.2%
\$10,001 - 20,000	43.4%	41.1%
\$20,001 - 30,000	42.5%	6.0%
\$30,001 +	12.0%	1.7%
Average Income	\$21,828	\$10,657

Cross-tabulation of income and family size showed that there were very few instances of clients who were outside the threshold levels. Those that were, turned out to be anomalies such as an individual whose recorded income during the previous year was high, but who had recently gone on permanent disability. Legal Aid Manitoba Staff were often required to make independent judgments about eligibility.

Net Worth

Levels of wealth (net worth) are not formally described as a condition for eligibility into legal aid. With higher gross incomes, the ownership of assets grows as does the obligation to repay debt. Net worth is broadly defined as the sum of all assets less the sum of all liabilities. For example, the amount of outstanding mortgage is subtracted from the estimated house value (as reported by client). Table 9-3 shows the overall patterns of net worth for both groups.

Expanded Eligibility clients tend to be both more in debt, and have more wealth, than Regular Legal Aid clients. In many cases, the wealth of Legal Aid Manitoba clients (in either program) may be in the form of a house or land. In a divorce proceeding Legal Aid Manitoba may issue a charge on land which will recover legal costs out of the sale of the property after a separation agreement has been finalized. The fact that 75% of the Regular Legal Aid clients have no net worth may reflect their economic reality, but it also is related to the fact that detailed financial information is often not required in determining eligibility for that program. For example, anyone on social assistance is immediately accepted and no additional financial information is requested (except where real estate is owned). The financial review is more exhaustive for applicants to Expanded Eligibility.

Net worth is an important consideration for acceptance into the Expanded Eligibility Program because one component, debt load, bears on ability to maintain

Table 9-3
Client Net Worth by Program

Net Worth	Program	
	E.E.	R.L.A.
Less than (\$2500)	31.8%	7.8
(\$2500) - (\$1)	18.5%	5.8%
\$0	12.6%	75.0%
\$1 - \$2500	15.5%	6.0%
More than \$2500	21.6%	4.4%

Note: Columns may not sum to 100% due to rounding.

payments. The higher the debt load, the higher the applicant's gross monthly payments, the more difficulty may be expected in maintaining the regular monthly instalments. There are relatively few instances of obviously ineligible clients receiving legal assistance. This is entirely expected, since higher income clients would normally have access to legal assistance and would wish to ensure they have some ability to direct their counsel. Legal aid clients, whether regular or on expanded eligibility certificates, typically have less ability to direct their counsel since they do not pay. There is no evidence that the quality of legal assistance varies between lawyers operating under legal aid certificates and those who are paid directly by the clients. It is probably the case that higher income clients require specialized expertise in areas such as taxation, which typically would not be eligible for legal aid.

Patterns of Service

The 1989 Annual report tabled by Legal Aid Manitoba, reported that there were a total of 31,061 legal aid applications in the province. Of these, 8,592 were civil, 11,488 were criminal and, 1,857 applications were made by youth. In addition, the 1989 year end statistics indicated that 7,329 applications were refused and 1,857 certificates were cancelled. With respect to the yearly distribution of certificates for the province, 16,983 cases were handled by the private bar and 6,749 cases were handled by law centres.

In reference to the distribution of certificates across the provincial regions (and area offices), in 1989 Winnipeg handled 18,053 (58.1%) of the certificates (youth, civil, criminal), Brandon managed 2,382 (7.1%) certificates while the North (Thompson and The Pas) and Dauphin handled 2,091 (6.7%) and 1,506 (4.5%) certificates respectively. In terms of Expanded Eligibility, the program was deliberately under-publicized because of initial concern that there would be an explo-

Table 9-4
Certificate Purpose

<i>Certificate Purpose</i>	<i>Program</i>	
	<i>E.E.</i>	<i>R.L.A.</i>
Criminal		
Category A	0.5%	0.4%
Category B	9.1%	9.6%
Category C	23.5%	50.0%
Total Criminal	33.1%	60.0%
Civil/Domestic	66.9%	40.0%

sion in demand. In the second year the program began to be marketed more aggressively and demand rose sharply.

Type of Case

Expanded Eligibility has allowed clients to access service to support civil cases. The pattern of criminal cases shows Regular Legal Aid clients typically tend to be involved in less serious crimes.

The fact that the Expanded Program has 67% of civil cases reflects an extension of subsidized legal services primarily in family dispute matters. These cases would previously have been handled by private lawyers who would have made a variety of arrangements for the client to receive services. This is examined in more detail below.

Summary

The Expanded Eligibility Program has extended legal services to the working poor. There was no evidence that services are being extended to groups beyond those intended by the program, although important and difficult questions arise in the determination of net worth and how assets should figure in the determination of eligibility.

The Experience with Default

A key issue in the evaluation is whether clients will have an "abnormal" rate of default. Assessing whether rates are high can be performed in two basic ways:

- If rates exceed those found in comparable sectors then rates can be judged as excessive. There are few public service comparisons with the program and the rates of default in private sector retail activities could be used.

Table 9-5
Status of Accounts Receivable (Number of Accounts)

<i>Current (No Default)</i>	<i>Defaults Between 30 days and 90 days</i>	<i>Defaults More than 120 days</i>	<i>Total</i>
291	85	77	453
64.2%	18.8%	17.0%	100%

Note: Delinquency ratio of 35.8% calculated as $[(85 + 77) / 453]$.

- A second criterion is cost recovery. Default losses are usually spread across the entire client group. If these costs cause a decline in demand for the service, then defaults may be judged as excessive.

The basic conceptual model for this analysis is similar to that used by retail operations. Default may be defined as unpaid balances after certain periods of time. An overdue bill is often defined as any invoice not paid after 30 days. The Board of Legal Aid Manitoba reviews overdue accounts in excess of 120 days, and depending on advice from the staff may declare an account delinquent. It should be noted that certificates are usually withdrawn once an account is delinquent by more than 30 days and lawyers are not paid for further service once a certificate is withdrawn. Legal Aid Manitoba maintains a very strict policy in this regard.

Extent of Late Payments/Defaults and Rate of Recovery

The "aging" of the accounts receivable, on the basis of the number of accounts on August 31, 1990 is shown in Table 9-5. "Aging" of accounts receivable is a term used to denote the proportion of unpaid invoices past stated due dates. The usual bench-marks are 30, 60, 90 and 120 days past the date on the invoice. An unpaid invoice "ages" as it remains unpaid.

As of August 31, 1990 there were 453 active accounts with an average amount owing of \$91. Approximately 300 cases were completed between June 1, 1989 and August 31, 1990 leaving 453 active cases for the study. If we exclude the 209 accounts with nil balances, the average amount owing for the remaining 244 accounts is \$170. Is this high or low? Obviously, it is invalid to compare Expanded Eligibility to department stores or credit cards. Further, it is quite common for many people to leave bills unpaid past 60 days and absorb the late payment fees. The 17% level for delinquency over 120 days appears to be reasonable given the special circumstances of the client population.

Table 9-6 shows that 18.0% of total dollar value of receivables were within the 30-day due date. Of the balances outstanding, 35.6% of the money owed to Legal Aid Manitoba by Expanded Eligibility clients has been due for more than 120 days.

Table 9-6
Status of Accounts Receivable (Account Balances)

<i>Current (No Default)</i>	<i>More Than 30 Days</i>	<i>More Than 60 Days</i>	<i>More Than 90 Days</i>	<i>More Than 120 Days</i>	<i>Total Balance Outstanding</i>
\$7,597	\$7,445	\$6,467	\$5,192	\$14,732	\$41,433
18.3%	18.0%	15.6%	12.5%	35.6%	100.0%

A total of \$176,577 has been billed by Legal Aid Manitoba to Expanded Eligibility clients of which \$117, 598 had been paid as of August 31, 1991. The amount of \$7,824 (credit adjustments) reflects NSF cheques, reversals due to overpayment, etc., and \$9,722, which has been formally written off by the Board of Legal Aid Manitoba. An overpayment occurs when a client has been maintaining payments and the case concludes quickly. The lawyer's bill to Legal Aid Manitoba can be less than the amount paid by the client, in which case a refund is paid.

The decision to write off a debt is based, in part, on whether an account is more than 120 days overdue, and also on the general prospect for recovering the amount owed. Not all accounts that are more than 120 days overdue will be written off. Similarly, clients who are less in arrears might have their debt written off. For example, if the client has received a long-term sentence, Legal Aid Manitoba might write off that debt. The decision to write off considers many aspects of the case, the client, and the debt.

The administrative costs for 1990-91, are estimated to be \$143,600, or about \$140 per client (assuming about approximately 1000 clients over this period). These administrative costs are not recovered — the client only pays the direct legal cost of private or Legal Aid Manitoba lawyers on a tariff or block payment basis. With an average monthly payment of \$50-\$75, these administrative costs could be borne with an extension of the total billing period of two to three months. Given the sensitivity of clients (as determined in the surveys) to the level of monthly payment as seen from the client surveys, an extension of the payment period is a more viable approach than increasing the monthly instalment.

Client/Case Characteristics Related to Late Payments/Defaults

Delinquencies are higher than average, especially delinquencies in the over 120 day category, when clients:

- reside in the Northern region;
- are involved in minor criminal cases.

A logistic regression related attributes of the client and certificate type to the probability of a default. This procedure calculates the probability of a delinquency

based on type of case and the attributes of the client. Its primary use in this study was to measure which case and client attributes are statistically significant in predicting default. In this way, Legal Aid Manitoba may elect to design client management procedures based on these attributes. A major advantage of this approach is that all important influences on the probability of default can be analyzed simultaneously.

The technique of logistic regression analysis defines an "effect" or *dependent variable* which is explained by a variety of "causes" or *independent variables*. The explanation is statistical and algebraic. The regression equation shows how each "cause" contributes to the variation in the "effect." In this model we are seeking to establish how various attributes of the client and the cases (the independent variables) influence the *probability of default*. We selected the following attributes to predict default:

- net worth (in thousands of dollars);
- family income (in thousands of dollars);
- region;
- certificate purpose (criminal versus civil);
- age of client;
- gender.

In addition we used three indicators of default:

- any delinquency over 30 days;
- any delinquency over 90 days;
- any delinquency over 120 days.

By using progressively stricter definitions of delinquency, it is possible to analyze how late payments relate to socio-economic attributes. Table 9-7 shows the results of a logistic analysis. The *dependent variable* has the value of 0 if the client is not in default and a value of 1 if he or she is in default. In this way, the 0's and 1's are correlated with changes in income, age, region of Manitoba, etc.

The independent variables have the following definitions:

- *NET WORTH* is total assets less liabilities, including equity in home, car value, cash less personal debt and other loans requiring repayment.
- *FAMILY INCOME* is as provided by the applicant and further verified by Legal Aid Manitoba.
- Three dummy variables are created for the non-Winnipeg Centres of Brandon, the North, and Dauphin. The *INTERCEPT* accounts for Winnipeg as a region.
- *CERTIFICATE PURPOSE* is 0 for criminal cases and 1 for civil cases.
- *AGE* is as defined, and *SEX* indicates 0 for male and 1 for female.

In Table 9-7 each number represents a "coefficient" or the degree to which an attribute of the case or the client influences the chances of a default. The higher the number, the more influence that attribute has on the chances of default. The numbers in the brackets are the "standard errors" of the corresponding coefficient.

Table 9-7
Results of Logistic Analysis of Delinquency

Variable	All Delinquencies	Delinquencies Over 90 Days	Delinquencies Over 120 Days
Intercept	-.159 (.812)	1.854 (.032)	.533 (.497)
Net Worth	.000 (.263)	.000 (.392)	.000 (.795)
Family Income	.000 (.464)	.000 (.045)	.000 (.537)
Region (Brandon)	.116 (.426)	-.080 (.699)	.123 (.512)
(North)	.522 (.001)*	.543 (.003)*	.430 (.015)*
(Dauphin)	-.242 (.572)	-.016 (.977)	-.293 (.500)
Certificate Purpose	-.302 (.015)*	.025 (.881)	-.430 (.007)*
Age	.022 (.066)	.012 (.446)	.021 (.174)
Gender	.139 (.271)	.134 (.409)	.074 (.671)

Standard errors in brackets.
* Significant at the 5% level.

Low standard errors are associated with high reliability. The asterisk (*) denotes those coefficients with the highest reliability — the others can be treated as if they had no effect (regardless of their size). The reliability of the coefficient is simply a ratio of the coefficient value divided by the standard error.

Table 9-7 confirms that type of case and region are very important in explaining the pattern of defaults encountered by Legal Aid Manitoba in the administration of the Expanded Eligibility Program. It also shows that none of the other selected case and client attributes are important in explaining the pattern of default.

- For delinquencies over 30 days (column 1) the location (North) and purpose of Certificate have a statistically significant impact on the probability of delinquency. The three non-Winnipeg regions are referenced to the average for all data. Similar results are seen in Columns 2 and 3 except that whether a case is criminal or civil has no impact on arrears more than 90 days. This is analyzed in more depth immediately below.
- Since the dependent variable is 0 for no delinquency and 1 for a delinquency, the results in column 1 state that the probability of a 90-day default is 12.5% higher for a client in the North compared to a client in general. This is calculated by assuming that the change in probability occurs at the means of all variables. The coefficients in the table are multiplied by .23 (.358 × (1 – .358)) to obtain an estimate of the increase in probability produced by a unit change in the independent variable. The number .358 is the proportion of clients in arrears by more than

Table 9-8
Results of Logistic Analysis of Delinquency
(Alternative Definition of Default)

Variable	All Delinquencies Over 30 Days	Delinquencies Over 120 Days
Intercept	-.343 (.605)	.222 (.774)
Net Worth	.000 (.228)	.000 (.753)
Family Income	.000 (.579)	.000 (.707)
Region (Brandon)	.120 (.415)	.129 (.494)
(North)	.557 (.000)*	.521 (.002)*
(Dauphin)	-.225 (.600)	.354 (.414)
Less Serious Criminal Cases	.409 (.001)*	-.370 (.014)*
Age	.021 (.087)	.021 (.176)
Gender	.147 (.220)	.160 (.324)

* Statistically significant at more than 5% error level.

30 days. Since the variable indicating a Northern client is a dummy variable (1 for North, 0 for non-North), the coefficient indicates how a client being from the North changes the log of the odds of default. Translated into probability terms, and evaluated at the means of the variables, this implies that the coefficients be divided by 4 to approximate a probability estimate.

The increase in delinquency for the North holds for all levels of arrears as seen in Columns 2 and 3. The increase in probability of arrears of any duration is 10%–13% for Northern clients.

- *CERTIFICATE PURPOSE* is also a dummy variable (0 for criminal and 1 for civil). The negative sign indicates that a civil case is less likely to cause a delinquency of more than 30 days or more than 120 days (Columns 1 and 3). There is no apparent relationship between whether a case is criminal or civil for arrears more than 90 days. This is curious and probably reflects multicollinearity due to sampling problems. An extension of the analysis is presented in Table 9-8 to address this problem.

Table 9-8 shows the results obtained by defining arrears as over 30 days and arrears over 120 days and by isolating less serious criminal cases — all other types of cases are lumped together. A less serious criminal case is about 10% more likely to be in default than any other type of case. These minor criminal matters present a problem since they are dealt with quickly in the legal system. Often there is no preliminary hearing and cases usually conclude early in the instalment cycle. A

case from the North adds another 12% to the likelihood of default.

Some caveats are in order:

- Only those variables that are believed to have important impact on delinquency were included in the model. It is possible that other attributes of cases and clients may influence the probability of delinquency.
- The definition and measurement of some of the independent variables is a problem. In particular, information on family income is very difficult to collect and verify. Similarly, net worth depends on a fairly complex assessment of the financial situation of clients. Legal Aid Manitoba performs a sufficient determination within the parameters of established policy and the legislation. However, as a basis to assess probable default, these variables require very precise and validated measures.
- The model has several descriptors of clients (income, net worth, age, sex, etc.). In comparison case attributes are only ranked by Legal Aid Manitoba on a scale from 1–70, and then further categorized into four categories, three of which are criminal cases. Although the ranking certainly appears reasonable and is based on judgment and experience, it is possible that this sole indicator is not a sufficient measure of case characteristics. Other attributes such as typical sentence, conviction rate, etc., may improve the predictive power of the model.

Default Management

Three alternatives are available for managing default:

- increased case management and follow-up;
- earlier cancellation;
- denial of service to high risk clients.

The current policy is to monitor closely all clients and cancel certificates immediately when payment is not received. Legal Aid Manitoba staff are not pre-emptive. Partial payments and rescheduling of debts are always offered as options before a certificate is cancelled. In a few cases, a client's economic circumstances may have changed and a regular legal aid certificate may be issued. At the point the study was completed, earlier cancellation was not seen as required. However, if defaults rise, then this option is an obvious strategy to maintain the fiscal integrity of the program.

Finally, screening high risk clients is an obvious, but very difficult policy to implement. Many clients with criminal legal problems may be incarcerated and they will not have the resources to maintain monthly payments. In many cases they may also be dissatisfied with the service since they were convicted. If criminal cases maintain their high probability of default it makes sense to limit the program to civil cases only. Private lawyers may have assets such as cars and houses signed over as surety before assuming criminal cases for those with doubtful means to

pay. While Legal Aid Manitoba uses this form of security on divorce proceedings it rarely exercises its option to sell real estate to pay for a bill. It would be difficult for Legal Aid Manitoba to adopt such a policy on criminal matters.

Perspectives of the Private Bar and Legal Aid Manitoba Staff

The lawyers from the private bar who were interviewed had a mixed review of the Expanded Eligibility Program. In general, those who handled criminal cases tended to view Expanded Eligibility as "insurance" and were positive about the Program since they received payment for services rendered regardless of whether the client paid. In this way they have experienced the same default problems for clients with criminal problems as Legal Aid Manitoba. Those who handled civil cases were less supportive of the Program. They believed that it upset the usual financial arrangements they would make with clients and therefore, it was believed to reduce their incomes.

Members of the private bar generally concurred that few Expanded Eligibility certificates were inappropriate and the Program was well targeted. It is important to note that many respondents had a poor knowledge of the differences between Expanded Eligibility and Regular Legal Aid. Also, much of the objection to the Program reflected general dissatisfaction with the tariffs offered for all legal aid work.

Legal Aid Manitoba staff were supportive of the Program and believed that it was appropriately targeted. There were many concerns expressed about the difficulty in changing a legal aid operation where service is provided without fee to one where fees are demanded and payment is monitored. It was clear that staff felt considerable ambivalence and some discomfort in this change in the "culture" of the legal aid operation. In many legal aid offices there is a clear assumption that legal assistance is part of a general income redistribution process that society defines to make life "fairer" for poor people. Many staff attach a high priority to this role. There is reluctance to subject clients to a searching means test or withdraw services when clients do not maintain payments.

The concept of a different culture is important. Legal aid is historically a program that provides assistance solely on the basis of an economic and family size test. Once an applicant qualifies, service is rendered without question. Since many applicants are on social assistance and have no assets, the economic tests are unambiguous. With Expanded Eligibility two important changes are introduced. First, the economic test is usually more complex. With higher incomes, assets may be substantial. Legal Aid Manitoba intake workers often must undertake a more complex economic test to verify whether an applicant is qualified for assistance. Second, eligibility is constantly assessed by the maintenance of payments. At this time, acceptance of a client and delivery of services is separated from the accounts receivable. This is a wise strategy, since "personalities" are removed and the payment enforcement process is not influenced by knowledge of the client's circumstances.

This sentiment is in contrast with other views expressed by some staff and management that this approach allows the extension of legal services to the working poor who otherwise might confront much higher bills. Cast in this perspective, the need to recover costs so that services can be maintained, is seen as a positive action. In the longer term, this changed culture should only produce a transitory problem for Legal Aid Manitoba.

Which focus prevails depends on management and its approach to client qualification and payment enforcement. In the final analysis, those who default on their payments limit the services to clients who have yet to apply. In the first year, Legal Aid Manitoba has managed this process quite well. The overall default ratio, that is the proportion of accounts that are delinquent by more than 120 days, is around 14%. This is a good level of performance.

Summary and Conclusions

The Expanded Eligibility Program introduced a new approach to extending legal aid to the working poor. It extended services while introducing a user pay system as well. Not only did it change the accessibility of legal aid within the province, it also introduced a new process within Legal Aid Manitoba. Prior to Expanded Eligibility, the entire structure of Legal Aid Manitoba consisted of qualifying clients, and then delivering services without charge except for a small number of clients who were involved in agreements to pay.

Expanded Eligibility requires Legal Aid Manitoba to:

- Expend additional cost in qualifying applicants. Under the Regular Legal Aid program, a high proportion of applicants are on social assistance and once this is verified, no additional financial data are required. Under Expanded Eligibility the financial or means test process is much more onerous and exacting.
- Manage an accounts receivable and accounts payable process. Legal Aid Manitoba must ensure clients pay regularly and on time. This has introduced a different "culture" within the organization.

In an era of fiscal restraint, services such as Expanded Eligibility which do not cover all costs may be subject to detailed scrutiny. Additional revenue sources will likely have to be considered to reduce the administration costs. These could include charging an administration fee, either a flat amount or as a percentage of billings and interest on overdue and/or unbilled amounts. A policy of extending the period of payment, which we expect to amount to about 2–3 months of extra instalments on average, is probably a more acceptable approach to the average client. Adding \$190 to the total bill represents a substantial increase for the average client who pays between \$200–\$400 in legal fees. An alternative is to recover only a portion of the administrative fees such as adding only the salaries and office costs. This implies an administrative cost of \$117 per client (the cost per client disregarding bad debts). Other percentages of administrative costs can also be added such as a

percentage surcharge to a maximum. There is always a danger of incurring collection problems if instalments are extended over a longer period.

There is evidence that certain client and case attributes are associated with a higher risk of delinquency and eventual default. Although the initial year may well be atypical, cases/clients involved in minor crimes and from the North have a higher risk of delinquency. This suggests that increased monitoring/control and/or a stricter cancellation policy for these cases may be warranted. With additional case information, the management information system should be able to become more precise in predicting clients who are likely to default. As part of the delinquency management process, a discretionary approach to repayment may prove beneficial. As we discovered in the client survey, many did not attempt to renegotiate their monthly payment. Yet, half of those who did were able to obtain a reduction in their instalments and maintain their eligibility. It is probable that delinquencies could be reduced by being more proactive in offering to review instalments for those who fall into arrears.

Another policy that should be considered is to encourage private lawyers and Legal Aid Manitoba staff counsel to provide better estimates of the total costs the client may face. However, there is risk in projecting fees. Any given case may have particular difficulties which cause costs to increase well beyond previous ranges. Clients could easily misinterpret the estimates as a contract. As an interim measure, one alternative might be to reveal ranges only in those cases where there has been little variation.

Whether to state the expected cost saving from using staff versus private counsel is more controversial. The private bar could easily interpret this approach as aggressive marketing by Legal Aid Manitoba. At this time, Legal Aid Manitoba requires the private bar to deliver all forms of subsidized legal services, and care must be taken not to alienate private lawyers.

Naturally, any policy of delinquency management and cost recovery should be carefully reviewed as the ongoing administration costs may exceed the benefits. A fully integrated management information system will be essential to producing the timely information needed to support such periodic policy reviews.

Clients and non-participants (those who were refused service) told us that wider considerations should determine eligibility. Some clients complained that monthly obligations other than child maintenance and rent should be considered in determining eligibility. For example, some clients stated that car payments when the vehicle is needed for employment should be considered when setting the monthly instalment.

The consideration of assets, debts, and income poses an important problem for the Expanded Eligibility Program. At this time it appears that in many cases this consideration is not guided by explicit policy. At the time of this evaluation, a written policy was in the final stage of approval.

A related issue concerns the process of verification of economic status. In one aspect, Expanded Eligibility represents a loan program. Clients are allowed access

to legal services, for which they pay over an extended period of time. In our view there is benefit in moving the initial application and verification process somewhat closer to the models used by financial lending institutions. Clients on the surveys did not object to the need for providing such information. Many would welcome it in the context of a broader definition of allowable monthly expenditure.

In its first year of operation Expanded Eligibility clearly filled a need among the working poor of Manitoba. In general, its administrative function was well executed. Default rates were comparatively low, and the Program was able to cover the costs of legal counsel. It does not, and was not intended to cover administrative costs as well.

Several cautionary notes are in order:

- The expected growth in client load resulting from the current publicity campaign will increase administrative loads. Failure to address systems and personnel needs outlined in this report could compromise this initial success.
- Expanded Eligibility attracted a high number of domestic cases. The private bar believes these cases to be more expensive than criminal cases. Aside from the comments regarding Legal Aid Manitoba tariffs that are beyond the scope of this study, expansion of these cases will make more demands on the private bar. Private lawyers who deal with domestic cases, tend to be ambivalent toward Expanded Eligibility Program. Also, as the client load increases, lawyers may come to view the Program as competition. Legal Aid Manitoba must maintain close contacts with the lawyers who supply this service to ensure there is adequate capacity to deal with increased demand.

The private bar that deals with criminal cases tends to view the Expanded Eligibility as an "insurance" program in guaranteeing payment from risky clients. Moves to promote Legal Aid Manitoba staff lawyers would be resented by this group.

- About 25% of all cases use Legal Aid Manitoba Staff Counsel. Typically the cost is about one half that of using private lawyers. Legal Aid Manitoba could manage costs of an expanded program by hiring more staff counsel. But before such a move is contemplated, it is essential that a study be undertaken to ensure that the marginal costs of additional staff counsel can be met through increased billings. While we believe that this is the case, there is an initial investment in salaries and orientation required. As a first priority, we believe that investment in an integrated management system is more advantageous. Also, any expansion of this program must require close consultation with the private bar.

PART IV

EVALUATING CORRECTIONS